

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207
Reply to E-mail:
bhall@hall-associates.com

July 9, 2015

Via FOIA Online

Regional Freedom of Information Officer
U.S. EPA, Region 3
1650 Arch Street
Philadelphia, PA 19103-2029
Facsimile (215) 814-5102
Email: R3FOIA@epa.gov

**Re: Freedom of Information Act Request for Records Associated with the
Wissahickon Creek Watershed's EPA Region 3 Draft TMDL:
Periphyton Data following full Implementation of 2003 TMDL**

To Whom It May Concern:

This is a request for a public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This FOIA request is being submitted on behalf of the various municipal POTWs and MS4 communities affected by the proposed Wissahickon Creek Watershed TMDL, with an anticipated financial impact exceeding \$500 million. For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages (including e-mails to and from personal e-mail accounts), minutes, handouts, policy statements, data, technical evaluations or analysis, and studies.

Background

The Wissahickon Creek located northwest of Philadelphia, PA is a tributary to the Schuylkill River. A draft total phosphorus ("TP") TMDL for the Wissahickon Creek Watershed was released by EPA Region 3 ("Region 3") in May 2015. According to the draft TMDL document, the TP endpoint used in the TMDL is based on a conceptual model wherein TP stimulates excessive algal growth that, in turn, adversely affects aquatic life (particularly macroinvertebrates). The justification for targeting TP in this TMDL is based upon three documents: Development of Nutrient Endpoints for the Northern Piedmont Ecoregion of Pennsylvania: TMDL Application (November 20, 2007), Development of Nutrient Endpoints for the Northern Piedmont Ecoregion of Pennsylvania: TMDL Application – Follow-up Analysis (July 18, 2012), and Evaluation of Nutrients as a Stressor of Aquatic Life in Wissahickon Creek, PA (February 23, 2012).

Hall & Associates

The Draft TMDL is based on modeling to meet the TP endpoint identified in the supporting documents. The water quality model also predicts algal growth and dissolved oxygen conditions in Wissahickon Creek.

Request

This request is for all documents relied upon by EPA and/or its consultant, Tetra Tech, in developing the TMDL regarding the following issues:

- 1) Data on periphyton biomass in the Wissahickon Creek watershed collected after implementation of the 2003 Wissahickon Creek TMDL in NPDES permits and attainment of the TMDL-based limits for ammonia-nitrogen, nitrate-nitrite, orthophosphate, and CBOD by the affected permittees. (TMDL at 1; “Since that time, despite implementation of the 2003 Nutrient TMDL, PADEP and others have provided documentation that the watershed DO levels have improved but the stream remains impaired for the aquatic life use caused from excessive nutrients resulting from nuisance algal growth. Although the 2003 Nutrient TMDL adequately addressed DO concentrations, it did not include TMDLs for either total nitrogen (TN) or total phosphorus (TP); and, thus, did not adequately address nuisance algal growth and its negative impact on aquatic life uses.”)

In responding to this request, please do not provide the documents that are publicly available on the Region 3 website providing the public notice for this TMDL along with several supporting documents. If the information requested is contained in one or more of these website documents, please identify the document(s), the location on the website (e.g., Proposed TMDL PDF Portfolio), and the page number where the information can be found.

Hall & Associates, acting on behalf of the municipal entities subject to the proposed TMDL, is entitled to a waiver of fees for their FOIA requests pertaining to data and regulatory information used by Region 3 in the preparation of Total Maximum Daily Loads (TMDLs) for Wissahickon Creek. Under FOIA, a waiver or reduction of fees is required when a request’s disclosure of the information is in the “public interest because it is likely to contribute significantly to public understanding” of government activities and “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The act’s legislative history clarifies that FOIA “is to be liberally construed in favor of waivers for non-commercial requesters” and that requests should be granted if the information disclosed is “new and supports public oversight of agency operations, including the effect of agency policy on public health.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284-1286 (9th Cir. 1987), citing 132 Cong. Rec. S 14298 (1986).

Hall & Associates

The information contained within the requested records is largely scientific data and regulatory information used by EPA in drafting TMDLs for Wissahickon Creek; as such, its disclosure by EPA is vital to informed public comment on the content and appropriateness of EPA's TMDL proposals by local governments and the broader citizenry. Moreover, this information should be part of the public record as it provides the foundation for the legal and scientific basis for the proposed TMDL. "[R]eview is to be based on the full administrative record that was before the Secretary at the time he made his decision." *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971).

Hall & Associates, as the legal and scientific consultant to a broad coalition of municipalities operating wastewater treatment facilities and MS4 systems within the Wissahickon Creek watershed, is uniquely qualified to digest and disseminate this information to the public point source dischargers (POTWs, MS4s) affected by potential EPA TMDL development and implementation. Hall & Associates intends to use the released information from EPA to allow local governments and local citizens to comment on EPA's proposed TMDLs in an informed and accurate manner. Without such information a full understanding of the need for this TMDL cannot be evaluated and, thus, the input from the affected public would be significantly hampered. Since Hall & Associates' FOIA requests are intended to serve the public interest and are not in the commercial interest of the requester, a waiver of fees should be granted.

Please duplicate the records that are responsive to this request and send it to the undersigned at the above address. If the requested record is withheld based upon any asserted privilege, please identify the basis for the non-disclosure.

If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that only the necessary document is duplicated.

Respectfully,

/s/ William T. Hall

WILLIAM T. HALL

Associate

Hall & Associates

1620 I St., NW, Suite 701

Washington, DC 20006-4033

(202) 463-1166

bhall@hall-associates.com